

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$91,000,000 OF
GENERAL OBLIGATION OR WASTEWATER REVENUE BONDS OF SUSSEX
COUNTY FOR THE PURPOSE OF REFUNDING PRIOR DEBT OF THE COUNTY
WHICH WILL RESULT IN DEBT SERVICE SAVINGS AND AUTHORIZING ALL
NECESSARY ACTION IN CONNECTION THEREWITH**

WHEREAS, pursuant to Title 9 Delaware Code Section 7001(a), Sussex County, Delaware (the “County”) has “all powers which, under the Constitution of the State, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute” (the “Home Rule Power”);

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapter 67, the County authorized the design, construction and equipping of certain collection, transmission and treatment facilities for the West Rehoboth Expansion of the Dewey Beach Sewer System (the “West Rehoboth Projects”) and various other sewer projects in the County (the “Other Sewer Projects”);

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapter 67 and various Ordinances adopted by the County Council, the County authorized the issuance of its wastewater revenue bonds to finance the West Rehoboth Projects (the “West Rehoboth Bonds”) as more fully set forth in Exhibit A, which is attached hereto.

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapter 67 and various Ordinances adopted by the County Council, the County authorized the issuance of its general obligation bonds to finance various Other Sewer Projects (the “Other Sewer Bonds”, collectively with the West Rehoboth Bonds, the “Refunded Bonds”) as more fully set forth in Exhibit B, which is attached hereto.

WHEREAS, the obligations set forth in Exhibit A and Exhibit B remain outstanding and the County deems it in the best interest of the County to refund some or all of these obligations in order to realize debt service savings therefrom;

WHEREAS, it may be advantageous for the County to refund the Refunded Bonds with general obligation bonds or with wastewater revenue bonds also backed by the County’s full faith and credit;

WHEREAS, acting pursuant to the aforesaid authority, the County desires to authorize the issuance of its wastewater revenue bonds, or its general obligation bonds, or its wastewater revenue bonds which are also backed by the County’s full faith and credit, in order to refund the Refunded Bonds.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS (AT LEAST FOUR-FIFTHS OF THE MEMBERS OF COUNCIL CONCURRING HEREIN):

Section 1. Amount and Purposes of the Refunding Bonds. Acting pursuant to Title 9 Delaware Code Chapter 67, Sussex County shall issue its wastewater revenue bonds, or its general obligation bonds, or its wastewater revenue bonds which are also backed by the County's full faith and credit, in one or more series of bonds in the maximum aggregate principal amount not to exceed the principal amount of \$91,000,000 (the "Refunding Bonds") to refund some or all of the West Rehoboth Bonds set forth in Exhibit A and the Other Sewer Bonds set forth in Exhibit B, plus (i) redemption premium, if any; (ii) accrued interest thereon; (iii) costs of issuance; (iv) original issue discount; and (v) negative arbitrage from the date of issue to the redemption date. The annual debt service payments on the Refunding Bonds shall not exceed the annual debt service payments on the obligations to be refunded in any fiscal year.

The County Administrator is authorized and directed to give notice on behalf of the County of the call for redemption of the bonds selected for redemption before their scheduled maturity date consistent with the refunding plan determined by the County Administrator to be in the best interest of the County.

The monies raised from the sale of the Refunding Bonds (including the investment earnings thereon) shall be used solely for the purpose of (i) paying the principal, premium and interest on some or all of the Refunded Bonds to the date of maturity or prior redemption or to acquire United States Government (or Agency) obligations to be invested and applied for such purpose; (ii) the payment of costs of authorized capital projects (in the amount of the net present value savings, if borrowed) and (iii) the costs of issuance of the Refunding Bonds.

Proceeds of the Refunding Bonds may not be applied for the payment of any operating expense, the payment of any judgment resulting from the failure of the County to pay any item of operating expense, or the payment for any equipment or any public improvements of a normal life of less than 3 years.

Section 2. Security for the Refunding Bonds. The County hereby authorizes the pledge of its full faith and credit, or the pledge of the Gross Revenues of the relevant sewer districts (which shall mean all assessments, fees and charges made or imposed by the County with respect to the use or benefit of the applicable sewer district, including capitalization fees, connection fees, front footage assessments and service charges), or both, to the payment of principal, interest and premium, if any, on the Refunding Bonds.

Section 3. Appointment of Financial Advisor. The County hereby appoints Public Advisory Consultants as its financial advisor (the "Financial Advisor") in connection with the sale of the Refunding Bonds.

Section 4. Terms and Sale of the Refunding Bonds. The Refunding Bonds related to the West Rehoboth Project shall be issued pursuant to the terms of Trust Agreement dated as of April 1, 1994, as supplemented and as supplemented by a Supplemental Agreement which shall prescribe the terms of the Refunding Bonds related to the West Rehoboth Project. The Refunding Bonds related to the Other Sewer Projects shall be issued pursuant to the terms of a trust indenture which shall prescribe the terms of the Refunding Bonds related to the Other Sewer Project. The Refunding Bonds shall be sold in a public competitive bid transaction or in a

privately negotiated transaction with one or more investment bankers selected by the County Administrator, as shall be determined by the County Administrator to be in the best interests of the County. The Refunding Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine, with the advice of the County's Financial Advisor, to be in the best interests of the County, including containing a pledge of the County's full faith and credit. The Refunding Bonds may bear interest at such rate or rates and may mature in such amounts and at such times and may be subject to redemption as the County Administrator shall determine, with the advice of the County's Financial Advisor, shall be in the best interests of the County subject to the other provisions of this Ordinance.

Section 5. Details of the Refunding Bonds. The Refunding Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine to be in the best interest of the County. The County Administrator is authorized to determine the details of the Bonds including the following: the date or dates of the Refunding Bonds; provisions for either serial or term bonds; sinking fund or other reserve fund requirements; fixed or variable rate interest provisions; due dates of the interest thereon; the form of the Refunding Bonds; the denominations and designations of the Refunding Bonds; registration, conversion and transfer provisions; provisions for the receipt, deposit and investment of the proceeds of the Bonds; provisions for the replacement of lost, stolen, mutilated or destroyed Refunding Bonds; and provisions for issuing uncertificated obligations and all procedures appropriate for the establishment of a system of issuing uncertificated debt. The Refunding Bonds shall be executed by the manual or facsimile signature of the County Administrator, shall contain an impression of the County seal or a facsimile thereof and shall be attested by the manual or facsimile signature of the County Clerk and shall be authenticated by the Trustee.

Section 6. Authorization and Approval of Refunding Bond Documents. The County Administrator is authorized to execute and deliver on behalf of the County, a Supplemental Agreement to the Trust Agreement, a Trust Indenture, if necessary, with such terms and provisions consistent with this Ordinance which the County Administrator shall deem to be in the best interests of the County. In addition the County Administrator is authorized to enter into, on behalf of the County, all such other agreements as he shall determine shall be necessary or appropriate to carry out the intent of this Ordinance, including but not limited to a bond purchase agreement with respect to the sale of the Refunding Bonds, applications for and agreement with respect to bond insurance or other credit enhancement, agreement with The Depository Trust Company and agreement with depositories with respect to the bond proceeds and related funds.

Section 7. Authorization of Offering Documents. The County Administrator is authorized to cause to be prepared and to execute and deliver on behalf of the County, any and all offering documents he determines are necessary or appropriate in connection with the offering and sale of the Refunding Bonds, including a Preliminary Official Statement and an Official Statement, and he is authorized to "deem final" the Preliminary Official Statement for the purposes of Rule 15c2-12 of the Securities and Exchange Act of 1934 (the "Rule").

The final form of the Official Statement, and any supplement thereto, shall be substantially in the form of the Preliminary Official Statement, except for such changes, modifications, additions, and deletions as the County Administrator determines and approves. The President or the Vice-President of the Sussex County Council and the County Administrator are authorized to execute by and on behalf of the County such Official Statement (including any supplement thereto), and the County Administrator is authorized to cause such Official Statement (and supplement) to be distributed in connection with the offering and sale of the Refunding Bonds.

Section 8. Continuing Disclosure. The County covenants for the benefit of holders of the Refunding Bonds that, so long as any Refunding Bonds are outstanding, it will file or cause to be filed all financial information, operating data and notices of events, actions or failure to act, with such persons or entities and at such times as may be necessary to comply with the requirements of the Rule with respect to the Refunding Bonds.

The County Administrator is authorized to execute and deliver on behalf of the County a Continuing Disclosure Agreement in connection with the issuance of the Refunding Bonds specify the specific actions that the County shall be obligated to undertake to comply with the Rule. The County Administrator is hereby authorized to take such other actions, by contract with a fiscal agent or otherwise, as such official shall deem appropriate to cause the County to comply with this Section.

Section 9. Non-Arbitrage Certificate and Covenants.

(a) The County Administrator and the Director of Finance shall be the officials of the County responsible for the issuance of the Refunding Bonds within the meaning or Section 1.103-13(a)(2)(ii)(C) of the Regulations (hereinafter defined). The County Administrator and the Director of Finance shall also be the officials of the County responsible for the execution and delivery (on the date of the issuance of the Refunding Bonds) of a certificate of the County (the "Tax Certificate") that complies with the requirements of the Code, and the applicable regulations thereunder (the "Regulations"), and such officials are hereby authorized and directed to execute and deliver a Tax Certificate to Bond Counsel on the date of the issuance of the Refunding Bonds.

(b) The County shall set forth in the Tax Certificate its reasonable expectations as to relevant facts, estimates, and circumstances relating to the use of the proceeds of the Refunding Bonds or of any moneys, securities, other obligations to the credit of any account of the County, which may be deemed to be proceeds of the Refunding Bonds pursuant to Section 148 of the Code or the Regulations (collectively, the "Refunding Bond Proceeds"). The County covenants and agrees with the registered owners of the Refunding Bonds that the facts, estimates, and circumstances set forth in the Tax Certificate will be based on the County's reasonable expectations on the date of the issuance of the Refunding Bonds and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

(c) The County covenants and agrees with the registered owners of the Refunding Bonds that it will not make, or permit to be made, any use of the Refunding Bond Proceeds that would cause the Refunding Bonds to be "arbitrage bonds" within the meaning of

Section 148 of the Code and the Regulations and that it will comply with those provisions of Section 148 of the Code and the Regulations as may be applicable to the Refunding Bonds.

(d) The County specifically covenants that it will comply with the provisions of the Code applicable to the Refunding Bonds, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds of the Refunding Bonds, the use of such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the calculation and rebate of certain earnings resulting from the investment of the proceeds of the Refunding Bonds. The County further covenants that it shall make such use of the proceeds of the Refunding Bonds, regulate the investment of the proceeds thereof and take such other and further actions as may be required to maintain the exemption from federal income taxation on the Refunding Bonds. All officers, employees, and agents of the County are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Refunding Bonds as may be necessary or appropriate in connection herewith.

Section 10. Forward Commitment Contract. Prior to the issuance of the Refunding Bonds, with the advice of the Financial Advisor, the County Administrator is authorized to enter into a contract committing the County to issue the Refunding Bonds as well as any companion interest rate exchange agreements designed to obtain for the County the benefit of interest rates in effect prior to the actual issuance of the Refunding Bonds.

Section 11. Further Action.

(a) The County Administrator is hereby authorized to appoint, if appropriate, in such manner and on such terms and conditions as he deems appropriate, an escrow agent, a verification agent, a Bond Registrar and a Paying Agent, who may be the same person or organization.

(b) The President or the Vice-President of the Sussex County Council, the County Administrator, Director of Finance and the County Clerk are authorized and directed to take such other action on behalf of the County, as may be necessary or desirable to effect the adoption of this Ordinance and the issuance and sale of the Refunding Bonds and to provide for their security and to carry out the intent of this Ordinance, including the publication of notices and advertisements, the execution and delivery of customary closing certificates and/or interest rate exchange agreement, if such is in the best interest of the County.

Section 12. Effective Date. This Ordinance shall become effective immediately upon its passage. The County Clerk is hereby directed to publish a notice of the adoption hereof in accordance with Section 7002(m) of Title 9 of the Delaware Code, as amended.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF
ORDINANCE NO. _____ ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE
_____ DAY OF AUGUST 2011.

ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

EXHIBIT A
West Rehoboth Bonds

EXHIBIT B
Other Sewer Bonds